



STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

STEVE MARSHALL  
ATTORNEY GENERAL

501 WASHINGTON AVENUE  
MONTGOMERY, AL 36130  
(334) 242-7300  
WWW.AGO.ALABAMA.GOV

July 19, 2024

Mr. David J. Smith, Clerk of Court  
U.S. Court of Appeals for the 11th Circuit  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

**Re: *Darcy Corbitt, et al. v. Hal Taylor, in his official capacity as Secretary of the Alabama Law Enforcement Agency, et al.*, No. 21-10486**

Dear Mr. Smith:

On July 12, 2024, the Sixth Circuit held in *Gore v. Lee*, No. 23-5669, 2024 WL 3385247, that the Constitution does not require a State to alter government documents to record gender identity.

“After a child is born, Tennessee creates a birth certificate that identifies the biological sex of the newborn,” which Tennessee treats “as a historical fact unchangeable by an individual’s transition to a different gender identity.” *Id.* at \*1. Plaintiffs were males who identify as female. They did “not challenge the steadfast practice of simply recording an ‘enduring’ difference in the biological makeup of the species at birth,” but rather the refusal to allow them to change the record. *Id.* at \*4. The Sixth Circuit held that requiring a record of biological sex on a birth certificate does not violate the Fourteenth Amendment. *Id.* at 4. The “policy does not impose any special restraints on, and does not provide any special benefits to, applicants due to their sex,” but rather “treats the sexes equally.” *Id.* And “[w]hen a law does not ascribe different benefits and burdens to the sexes, that law does not discriminate based on sex, even if sex ‘factors into’ the law’s application.” *Id.* And “absent an existing fundamental right, the Constitution does not require the States to embrace the plaintiffs’ view of what information a birth certificate must record.” *Id.* at \*6.

Likewise, Alabama’s policy of placing sex (rather than gender identity) on driver’s licenses applies equally, regardless of sex. That approach “does not enforce any notion about how [people] should dress or speak, what pronouns they should use” or how they should present themselves. *Id.* at 5; *see* Opening.Br.17-24;

Reply.Br.3, 5-12. The Constitution does not require States “to use ‘sex’ to refer to gender identity on all state documents.” *Gore*, 2024 WL 3385247 at \*5.

The Sixth Circuit further held that there is no substantive due process or “informational privacy” “right to a birth certificate conforming to one’s gender identity,” because there is no such right “‘deeply rooted’ in our history and ‘implicit in the concept of ordered liberty.’” *Id.* at \*10; *see* Opening.Br.41-45.

Respectfully submitted,

s/ Edmund G. LaCour Jr.  
Edmund G. LaCour Jr.  
*Solicitor General*

State of Alabama  
Office of the Attorney General  
501 Washington Avenue  
Montgomery, AL 36130-0152  
Tel: (334) 242-7300  
Fax: (334) 353-8400  
Edmund.LaCour@AlabamaAG.gov

Counsel for the State Defendants

## CERTIFICATE OF COMPLIANCE

1. I certify that this document complies with the type-volume limitations set forth in Fed. R. App. P. 28(j) and 11th Cir. R. 28, I.O.P. 6. The document contains 350 words, including all headings, footnotes, and quotations, and excluding the parts of the brief exempted under Fed. R. App. P. 32(a)(7)(B)(iii).

2. In addition, this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point Times New Roman font.

s/ Edmund G. LaCour Jr.  
Edmund G. LaCour Jr.  
*Solicitor General*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was filed on July 19, 2024, using the CM/ECF Document Filing System, which will send notification of such filing to all noticed parties.

*s/ Edmund G. LaCour Jr.*  
Edmund G. LaCour Jr.  
*Solicitor General*

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Montgomery, AL 36130-0152  
Tel: (334) 242-7300  
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Counsel for the State Defendants